ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	)	2002 DEC 23 A 10:50
	)	
Application for Review of Alternative Regulation Plan	)	**Docket No. 98-0252**
Illinois Bell Telephone Company	)	CHIEF CLERK'S OFFICE
	)	
Petition to Rebalance Illinois Bell Telephone Company's Carrier Access and Network Access Line Rates	)	**Docket No. 98-0335**
	)	
Citizens Utility Board, People of the State of Illinois	)	**Docket No. 00-0764**
v.	)	
Illinois Bell Telephone Company	)	**(Consol.)**

REPLY OF ILLINOIS BELL TELEPHONE COMPANY ON MOTION FOR SECOND INTERIM ORDER ON SERVICE QUALITY

Introduction

Illinois Bell Telephone Company ("Ameritech Illinois"), by its attorneys, submits this reply to the Response of AT&T and WorldCom (the "CLECs") to the Motion for Second Interim Order on Service Quality (the "Motion"), filed in this proceeding by the Government and Consumer Intervenors ("GCI").

GCI asked the Commission to enter an interim order adopting the retail service quality provisions of the Final Post Exceptions Proposed Order (the "Final PEPO") in this proceeding, dated August 12, 2002. Ameritech Illinois demonstrated in its Response that such action was both unnecessary (as Ameritech Illinois' service quality is outstanding, and the Commission has ample alternative means to address any future issues) and unsupported by any evidence.

The CLECs' proposal would only compound the problems of GCI's motion. To the already inappropriate request for a new body of *retail* service quality rules, AT&T and WorldCom would add a regime of *wholesale* rules, including a "remedy plan,"

imported from Condition 30 of the Commission's 1999 order approving the SBC/Ameritech merger. The final Post-Exceptions Proposed Order already rejected that proposal, and the CLECs provide no basis for changing that conclusion now.

As with the request of GCI, the interim order requested by the CLECs is extraordinary, because the Commission seldom resolves significant issues in major dockets through interim orders. Further, the CLECs' proposal is procedurally improper, as it was raised for the first time in a response brief. Plainly, the CLECs are not responding to GCI's motion, but instead are attempting to make their own motion and seeking an entirely new outcome. Thus, the CLECs bear a heavy burden to demonstrate that the requested departure from the Commission's normal procedures is appropriate. As with GCI, they have not done so.

The CLECs fall far short of demonstrating any need for the extraordinary relief they seek. There is no evidence in this record of any current problem with wholesale service quality, and even now the CLECs do not allege one. In fact, Ameritech Illinois' wholesale service quality is excellent, and the CLECs' own brief demonstrates that the Commission has already adopted a "remedy plan" that the CLECs deem sufficient. The only purpose of the CLECs' motion is to provide an escape hatch in case the Commission, or a Court, decides that the existing remedy plan is unlawful – and in that case, imposition of that same plan here would also be unlawful. Further, the Order in Docket No. 01-0120 on which the CLECs rely is founded on a stale record, and it did not apply or even consider the standards of Section 13-506.1 of the PUA. And finally, granting the CLEC proposal would raise significant policy and procedural questions. For those reasons, the CLEC proposal should be denied.

Argument

AT&T and WorldCom's filing may give the Commission a sense of *déjà vu*. In exceptions briefing, Staff and McLeodUSA contended "that the wholesale performance measures and remedy plan that are adopted in the Condition 30 proceeding (Docket No. 01-0120) should be incorporated into Ameritech's alternative regulation plan." PEPO, at 237. The final PEPO, however, rejected that proposal, finding "that the [alternative regulation] Plan was not designed to further competition" and that "[i]ssues concerning wholesale service quality can and are being addressed in a wide variety of other proceedings." *Id.* at 239.

At the time, AT&T and WorldCom did not even brief the issue. Now, however, they attempt to resurrect the same proposal the ALJs already rejected, and to portray it as something new. Their brief is essentially a new round of exceptions briefing on a proposed decision that was issued months ago. The CLECs do not even acknowledge the prior briefing or the ALJ's proposed decision on this issue, much less present a basis for changing that decision.

I. The CLEC Proposal Addresses a Problem That Does Not Exist.

The CLECs do not show that any wholesale service quality problems exist today, or even that wholesale service quality is currently declining. Nor could they credibly do so. Ameritech Illinois' service quality is excellent. For each month of this year, Ameritech Illinois has met over 90 percent of the many performance standards subject to remedies. The Commission will shortly be conducting a full-scale review of wholesale performance (and assessing the results of independent audits of performance reports) as part of its assessment of section 271 compliance in Docket No. 01-0662. There is no

reason to depart here from the Commission's normal procedure for contested case proceedings.

Likewise, there is no showing or allegation that existing rules are insufficient to ensure continued high-quality wholesale service. To the contrary, the CLECs tout the "remedy plan" that was established as Condition 30 of the SBC/Ameritech merger, and they observe that the Commission struck the October 8, 2002 expiration date of that plan. The CLECs' attempt to impose a duplicative plan here rests on two hypotheses about the future, neither of which supports their proposal.

First, the CLECs suggest that Ameritech Illinois "could" someday file a petition to withdraw the Remedy Plan tariff, although they acknowledge that no such petition has been made to date. The short answer is that if Ameritech Illinois files such a petition in the future, the Commission can rule on that petition then, based on current facts, rather than attempting to short-circuit the process now based solely on the CLECs' say-so.

Second, the CLECs point out that Ameritech Illinois has appealed from the Commission's orders in Docket No. 01-0120. Plainly, if those orders are upheld on appeal, the CLEC proposal would be unnecessary. Conversely, if Ameritech Illinois prevails – and the fact that the CLECs want a redundant plan here suggests they consider Ameritech Illinois to have a significant probability of prevailing – the CLEC proposal would be improper. Simply put, the CLECs' proposal has been made for the express purpose of circumventing a potential court decision that the exact same plan is unlawful – particularly given the fact that the orders in Docket No. 01-0120 are now before and thus subject to the exclusive jurisdiction of the Appellate Court. *Citizens Utility Bd. v. Illinois Commerce Comm'n*, 276 Ill. App. 3d 730, 749, 658 N.E.2d 1194 (1st Dist. 1995) ("This court's power to decide appeals [under Section 10-201 of the PUA] precludes the

Commission from entering any order which would effectively interfere with this court's review of the order from which the appeal is taken."). The better course is to await the outcome of judicial proceedings, and to follow the Court's instructions instead of nullifying them.

II. The CLEC Proposal Relies on a Record that is no Longer Current or Relevant.

In addition, there is no evidentiary record in this case to support the CLEC proposal. The CLECs instead propose to dump the record from Docket No. 01-0120 into this case. But the record there is obsolete, and it would be out of place in this proceeding.

First, the evidentiary record in Docket No. 01-0120 was closed in 2001, and it did not include wholesale performance data after December 2000. Much has happened since then, but the record reflects none of the subsequent events. To choose just one obvious example, Ameritech Illinois' wholesale service quality has significantly improved, and it has been consistently strong since the record closed in Docket No. 01-0120, with Ameritech Illinois meeting over 90 percent of performance standards subject to remedies throughout 2002. See Attachment 1. Thus, the record does not include nearly two years of highly relevant performance data. Imposing monetary sanctions of the type proposed by the CLECs on such an outdated record cannot be justified.

Second, the orders in Docket No. 01-0120 were not based on – and did not even consider – the standards for an alternative regulation plan under Section 13-506.1 of the PUA. Instead, Docket No. 01-0120 only purported to apply the standards for Condition 30 of the merger approval. It would be improper to simply transplant a decision from one body of law to another.

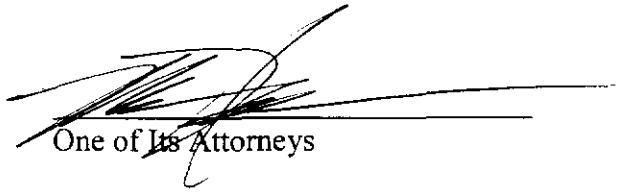
II. Established Commission Policy and Procedure do not Support the Granting of the CLEC Proposal.

Finally, established Commission policy and procedure also do not support the CLEC proposal. As Ameritech Illinois showed in its own response brief, issuing an interim order addressing service quality alone, in isolation from the rest of the issues in this proceeding, would raise difficult issues of both policy and procedure. First, as noted above, the Commission seldom resolves major, contested issues through an interim order. Such a departure from normal procedure must be well justified, and it has not been justified here.

THEREFORE, for the reasons set forth above, the CLECs' proposal should not be granted.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY



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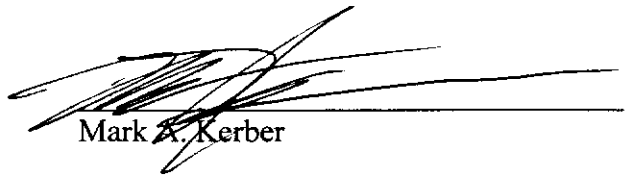
CERTIFICATE OF SERVICE

I, the undersigned, certify that a copy of the foregoing **REPLY OF ILLINOIS BELL TELEPHONE COMPANY ON MOTION FOR SECOND INTERIM ORDER ON SERVICE QUALITY** was served on the parties on the attached service list by U.S. Mail and electronic transmission on December 20, 2002.



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